

# ORIGINAL



0000062595

## MEMORANDUM

305m

TO: Docket Control

FROM: Ernest G. Johnson  
Director  
Utilities Division

*EA for EGJ*

Arizona Corporation Commission

**DOCKETED****DEC 19 2006**

DATE: December 19, 2006

DOCKETED BY	<i>WJL</i>
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RE: IN THE MATTER OF THE GENERIC INVESTIGATION OF TARIFFING  
AND NOTICE REQUIREMENTS FOR COMBINED INTERSTATE AND  
INTRASTATE CALLING PLANS (DOCKET NO. RT-00000J-05-0329)

### I. Introduction

On April 11, 2005, the Commission issued Decision No. 67745. Decision No. 67745 adopted a settlement agreement between the Commission's Utilities Division Staff ("Staff") and Qwest LD Corporation ("QLDC") and its affiliates in the matter of Utilities Division v. Qwest LD Corp. (Docket No. T-04190A-04-0904). Decision No. 67745 also ordered Staff to commence a generic investigation and rulemaking proceeding to address the filing requirements and tariff obligations of interexchange carriers. The terms and conditions of the approved settlement agreement also included an agreement between Staff and Qwest that the generic docket would be concluded within 18 months of Decision No. 67745, and an agreement by Staff that any new or additional filing requirements defined in the generic docket will have application to Qwest on only a going forward basis from the date of the final order in the generic docket.

Pursuant to Decision No. 67745, Staff initiated a generic docket on May 26, 2005.

On September 23, 2005, Staff issued its first set of data requests to Inter-exchange carriers, resellers of long distance, and/or incumbent long distance providers certificated in the states of Arizona based on their current status.

On October 18, 2006, at Staffs' request, a procedural conference was conducted via telephone. At the conference Staff requested an extension of time to file its report. Qwest agreed to Staffs' request for an extension.

On October 26, 2006, Staff issued an additional request for information to inter-exchange carriers, resellers of long distance, and/or incumbent long distance providers certificated in the states of Arizona based on their current status.

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## II. Background

QLDC was certificated to provide long distance service on or about December 9, 2003, in Decision No. 66613. QCC was certificated to provide long distance service on or about December 9, 2003, in Decision No. 66612. The services of both QLDC and QCC were determined to be "competitive" by the Commission and subject to the Commission's competitive classification rules.

Shortly after receiving Section 271 authorization from the FCC, QLDC and QCC began offering its Qwest Choice Long Distance calling plan in Arizona. Customers who subscribed to the Qwest Choice Long Distance residential calling plan prior to August 15, 2004, with service up to October 1, 2004, were assessed a \$.05/minute rate for interstate, interLATA/intrastate, and intraLATA/intrastate long distance calls, and were subject to the monthly cap of \$20.00 (if they had a qualifying Qwest Corporation local service home package) or \$25.00 (if they did not have a qualifying package). The calling plan was advertised to consumers as having "no monthly surcharge."

As required by law, QLDC and QCC filed tariffs and price lists with the Commission setting forth their rates for intrastate Qwest Choice Long Distance service, as well as other long distance packages. Those tariffs and price lists became effective on December 15, 2003.

On or about August 31, 2004, QLDC sent a written notice to its existing Qwest Choice Long Distance residential customers indicating that it was instituting a new monthly charge of \$2.00 applicable on a per line basis. The notice also indicated that a \$.99 "interstate" services fee would apply on a per account basis. Both charges took effect on October 1, 2004, for existing customers and on August 16, 2004, for new customers.

These charges apply to jurisdictionally intrastate long distance calls.

QLDC did not include the new monthly charges in the price lists that it filed with the Commission on July 5, 2004, with an effective date of August 5, 2004. Qwest did, however, post new interstate rate schedules (Qwest LD Corp. RSS No. 1) which contained both of the new monthly charges.

Shortly after QLDC gave notice of its \$2.99 monthly charge for its Qwest Choice Long Distance residential plan, the Commission began receiving complaints regarding the new charges. The Commission has received numerous complaints from consumers regarding the new monthly charges.

Consumers expressed considerable dismay and frustration to the Commission that Qwest had widely advertised its Plan as having "NO Monthly Fees", unlike the plans of other long distance carriers. In reliance on this, they signed up for the Qwest residential Calling Plan, only to be informed shortly thereafter that Monthly Fees would henceforth apply. These consumers felt that Qwest had misled them into signing up for the Plan, since shortly thereafter the

customers were told that the Plan's primary perceived benefit ("No Monthly Fee") was being eliminated.

On December 17, 2004, the Utilities Division ("Staff") filed a Complaint and Petition For Order to Show Cause against QLDC alleging that the Qwest Choice Long Distance residential Plan is in reality a plan which offers the customer the capability of making both interstate and intrastate long distance calls. Staff alleged that the interstate and intrastate portions of the plan are not severable or offered on a stand-alone basis. As such, Staff believed that Qwest is required to include in its intrastate price lists and tariffs all conditions of the plan applicable to intrastate long distance calls, which in this case includes the \$2.99 surcharge. Staff argued that unless QLDC is required to include all charges in its intrastate tariff which are applicable to intrastate services, QLDC could in the future impose unilateral rate increases on consumers for intrastate services without the oversight of the Commission and without complying with applicable Arizona law. Staff asserted that in effect, QLDC has cloaked its new charges in an "interstate" veil to evade the Commission's oversight authority over intrastate charges.

Staff's Complaint further alleged that QLDC formerly advertised its Qwest Choice Long Distance Plan as having "No Monthly Fees". The phrase "No Monthly Fees" or its equivalent was prominently featured in advertisements by QLDC for its Qwest Choice Long Distance Plan.

Staff stated in its Complaint that after obtaining authority to sell long distance services from the FCC under Section 271, Qwest and QLDC engaged in a concerted joint effort to sign up existing Qwest customers to QLDC long-distance service. Part of this effort included advertisements and promotional materials that promoted QLDC's Qwest Choice Long Distance Plan as having "No Monthly Fees".

Staff's Complaint also alleged that this prolonged advertising of the Qwest Choice Long Distance Plan as having "No Monthly Fees" created an expectation by QLDC customers that the Qwest Choice Long Distance Plan would, in fact, have no monthly fees. QLDC knew that its advertising would create this expectation.

Staff's Complaint alleged violations of A.R.S. Section 40-365 and A.A.C. R14-2-1106(B) which require public service corporations to file with the Commission schedules showing all tolls, rates, rentals, charges, and classifications to be collected or enforced. The Staff also alleged violations of A.R.S. Section 361 which requires the rates and charges of public service corporations to be just and reasonable. Related violations of A.A.C. R14-2-110(B) and/or A.A.C. R14-2-1109 were also alleged.

The Staff and QLDC subsequently engaged in settlement discussions in an effort to resolve the allegations contained in the Staff Complaint. The parties entered into a Settlement Agreement dated March 31, 2005.

Under the Settlement Agreement, Qwest agreed with Staff's interpretation of Arizona rules on an interim basis and that it will file intrastate long distance service tariffs and price lists

in Arizona consistent with Staff's interpretation of the Arizona statutes and rules pending the conclusion of the generic docket or further Order of the Commission. Staff agreed to commence a generic proceeding examining the filing requirements and tariff obligations of all interexchange carriers. Qwest also agreed to file with the Commission an intrastate tariff and/or price list containing a charge equal to or equivalent to (but not in addition to) the \$2.99 monthly surcharge which is now only included in the QLDC interstate rates and service schedule. Qwest agreed to include any and all monthly charges of this nature in the applicable intrastate tariff until such time as the generic docket is concluded or further Order of the Commission.

Under the Settlement Agreement reached in Docket No. T-04190A-04-0904, and approved by Decision No 67745, on April 11, 2005, Qwest agreed with Staff's interpretation of Arizona rules on an interim basis and agreed to file intrastate long distance service tariffs and price lists in Arizona consistent with Staff's interpretation of the Arizona statutes and rules pending the conclusion of this generic docket or further Order of the Commission.

The Utilities Division Staff was ordered to commence a generic investigation and rulemaking proceeding to address the filing requirements and tariff obligations of interexchange carriers.

### **III. Discussion**

Staff issued data requests to "Telecommunications Companies Holding CC&Ns in Arizona as Inter-exchange Carriers, Resellers of Long Distance, and/or Incumbent Long Distance" in this Generic Docket on September 23, 2005 and October 29, 2006. The results are as follows:

The following questions were included in the September 23, 2005 data request issued to 192 Carriers:

1. Do you impose any charges that pertain to both interstate and intrastate long distance calls on your customers that do not appear in your Arizona tariffs?
2. If your answer to number one is yes, please provide a list of all such charges.
3. If your answer to number one is yes, for each such charge please indicate whether it applies only when there is interstate usage on a customer's bill in a particular month or whether the charge applies even when all usage is intrastate.
4. If a charge that is not in your Arizona tariff applies even when all usage is intrastate, please explain why such charge should not be included in your intrastate tariff.

#### **RESPONSES TO THE SEPTEMBER 23, 2005 DATA REQUEST:**

1. 124 Carriers responded.

2. **AT&T, TCG, Sprint, Custom Network Solutions, Cincinnati Bell Long Distance, SBC Long Distance, Trinsic Communications and Granite Telecommunications responded "yes" to question 1. All others responded "no", including MCI.**
3. **Those responding "yes" to question #1 consistently supported their position by explaining that the charges that pertain to both interstate and intrastate long distance calls that do not appear in Arizona tariffs do appear in interstate tariffs.**

The following questions were included in the October 29, 2006 data request issued to the same Carriers who were issued the September 23, 2005 data request:

1. Is it permissible under Arizona Rules and Statutes for an interexchange carrier to impose surcharges that pertain to both interstate and intrastate long distance calls but not to include those surcharges in the intrastate Arizona tariff filed with the Arizona Corporation Commission? Please explain your answer in detail.
2. How should A.A.C. R12-2-1106(B)(4), A.A.C. R14-2-1109, and A.C. R14-2-1110 be interpreted with respect to charges for intrastate and interstate services provided in conjunction with each other? For example, a surcharge that applies regardless of which type (intrastate or interstate) of calls are actually made.
3. If a surcharge is said to apply to interstate toll charges only, but is also charged by the carrier when the customer makes solely intrastate toll charges, should the surcharge be included in the provider's intrastate tariff filed with the Arizona Corporation Commission and subject to the Commission's rules cited in question 2 above?
4. Should a new surcharge applicable to interstate toll calls, but which the carrier charges when solely intrastate toll calls are made, be included in the calculation of the carrier's maximum rate for purposes of A.A.C. 14-2-1110?
5. When bundled interstate and intrastate toll packages are offered, are the packages subject to both federal and state statutes, rules and requirements?

**RESPONSES TO THE OCTOBER 29, 2006 DATA REQUEST:**

1. **4 Carriers responded.**
2. **2 Carriers (AT&T and Qwest) provided additional information directly responsive to the above information requests**
3. **AT&T's responses further clarify the AT&T responses to Staff's September 23, 2005 data request and are summarized as follows:**

- i. **The intrastate tariffs for the AT&T long distance services explain that the intrastate services are an add-on or offered in conjunction with AT&T's interstate offering.**
  - ii. **A customer must first elect to purchase an interstate rate plan from AT&T before adding an intrastate plan.**
  - iii. **There are no additional surcharges that apply to intrastate calls.**
  - iv. **If a customer chooses to make intrastate calls or interstate calls or a combination of the interstate and intrastate calls or no long distance calls at all during a particular month the charge is still applies.**
  - v. **Fees first initiated under interstate plans, and not enhanced by the intrastate plans, are outside the jurisdiction of the ACC, specifically, A.A.C. R12-2-1106(B)(4), A.A.C. R14-2-1109, and A.C. R14-2- 1110.**
4. **Qwest filed comments related to Staff's October 29, 2006 information request that can be summarized as follows:**
  - i. **Qwest continues to maintain that the Fees in question in T-04190A-04-0904, and subject to Decision No 67745, were assessed by QLDC in return for the capability provided customers to use QLDC's network to place interstate calls.**
  - ii. **Qwest also believes that the remedy sought by the Staff would directly challenge the exclusive jurisdiction Congress granted to the FCC over interstate communications and carriers.**

#### **IV. Recommendations**

Staff's position in the Settlement Agreement between Qwest and Staff, attached to Decision No. 67745 as Exhibit 1, was based on Staff's beliefs that QLDC was required to file tariff and/or price list revisions with the Commission prior to implementing a \$2.99 surcharge as part of its Qwest Choice Long Distance calling plan, which applies to both interstate and intrastate long distance calls made by Arizona customers.

Staff's interpretation of the rules and statutes governing the tariffing obligations of Long Distance carriers has not changed. Staff continues to believe that charges that apply simultaneously to both inter- and intra-state calls should be tariffed. However, in the past five years the telecommunications industry has undergone significant shifts due to technology changes such as wireless, VoIP, and Broadband. For cases where inter-state services are provided in conjunction with intra-state services, Staff believes that including a reference in the carrier's intra-state tariff to rates contained in inter-state tariffs or inter-state price lists would satisfy this requirement.

Staff recommends that QLDC be given the option of (1) listings all long distance rates and charges within its Arizona intrastate tariffs or (2) denoting within its Arizona intrastate tariffs those charges and rates which are listed in QLDC's interstate tariffs.

Staff recommends that QLDC be given 90 days to modify its Arizona intrastate tariffs accordingly.

Additionally, Staff recommends that all intrastate long distance providers comply with the above Staff interpretation of tariffing rules and statutes. Intrastate long distance providers should be given 90 days to modify their Arizona intrastate tariffs accordingly, if necessary.

SERVICE LIST FOR: Generic Investigation of Tariffing and Notice Requirements  
DOCKET NO.: RT-00000J-05-0329

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Las Vegas, NV 89121-3002

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Reduced Rate Long Distance, LLC  
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Orlando, FL 32810

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Lubbock, TX 79414

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RRV Enterprises, Inc.  
dba Consumer Access  
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Houston, TX 77057

Manager of Regulatory Affairs  
One Point Communications  
dba Verizon Avenue  
Two Conway Park  
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